

## SENATE BILL No. 567

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-35.

**Synopsis:** Pull tabs. Authorizes licensed beer retailers to sell pull tabs, punchboards, and tip boards on the retailers' premises. Requires the department of state revenue to administer and regulate pull tab sales. Requires a licensed beer retailer to obtain a pull tab license from the department of state revenue before selling pull tabs, punchboards, or tip boards. Sets forth requirements for the licensed sale of pull tabs, punchboards, and tip boards. Sets forth license fees, prize limits, and the maximum price for a pull tab, punchboard, or tip board.

**Effective:** July 1, 2001.

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January 23, 2001, read first time and referred to Committee on Public Policy.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 567

A BILL FOR AN ACT to amend the Indiana Code concerning gaming and to make an appropriation.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 4-35 IS ADDED TO THE INDIANA CODE AS A  
2 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**  
3 **2001]:**

### **Article 35. PULL TAB SALES**

#### **Chapter 1. Application and Purpose**

##### **Sec. 1. (a) This article applies only to:**

7 (1) a licensee (as defined in IC 4-35-2-3); and

8 (2) the sale of pull tabs, punchboards, and tip boards on the  
9 premises owned or leased by the licensee.

10 (b) This article does not apply to any other sale of pull tabs,  
11 punchboards, and tip boards.

12 Sec. 2. The purpose of this article is to permit a licensee to sell  
13 pull tabs, punchboards, and tip boards.

#### **Chapter 2. Definitions**

15 Sec. 1. As used in this article, "commissioner" refers to the  
16 commissioner of the department of state revenue.

17 Sec. 2. As used in this article, "department" refers to the



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department of state revenue established by IC 6-8.1-2-1.

**Sec. 3.** As used in this article, "licensee" means a person who is:

- (1) a licensed beer retailer under IC 7.1-3-4; and
- (2) licensed to sell pull tabs, punch boards, and tip boards under this article.

**Sec. 4.** As used in this article, "pull tab" means a game conducted in the following manner:

(1) A single folded or banded ticket or a two-ply card with perforated break-open tabs is bought by a player from the licensee.

(2) The face of each card is initially covered or otherwise hidden from view, concealing a number, letter, symbol, or set of numbers, letters, or symbols.

(3) In each set of tickets or cards, a designated number of tickets or cards have been randomly designated in advance as winners.

(4) Winners, or potential winners if the game includes the use of a seal, are determined by revealing the faces of the tickets or cards. The player may be required to sign the player's name on numbered lines provided if a seal is used.

(5) The player with a winning pull tab ticket or numbered line receives the prize stated on the flare from the licensee. The prize must be fully and clearly described on the flare.

**Sec. 5.** As used in this article, "pull tab license" means a license authorizing a person licensed by the Indiana alcoholic beverage commission under IC 7.1-3-4 to engage in the sale of pull tabs, punchboards, and tip boards in accordance with this article.

**Sec. 6.** As used in this article, "punchboard" means a card or board that contains a grid or section that hides the random opportunity to win a prize based on the results of punching a single section to reveal a symbol or prize amount.

**Sec. 7.** As used in this article, "tip board" means a board, a placard, or other device that is marked off in a grid or columns, with each section containing a hidden number or numbers or other symbols that determine a winner.

### **Chapter 3. Department Powers and Duties**

**Sec. 1.** The department shall supervise and administer the sale of pull tabs, punchboards, and tip boards in Indiana under this article.

**Sec. 2.** For purposes of conducting an investigation or proceeding under this article, the department may do the following:

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(1) Administer oaths.

(2) Take depositions.

(3) Issue subpoenas.

(4) Compel the attendance of witnesses and the production of books, papers, documents, and other evidence.

Sec. 3. The department may adopt rules under IC 4-22-2 to:

(1) implement this article; and

(2) ensure that pull tabs, punchboards, and tip boards are sold in a fair and honest manner.

Sec. 4. (a) The department has the sole authority to license entities under this article to sell, distribute, or manufacture the following:

(1) Pull tabs.

(2) Punchboards.

(3) Tip boards.

(b) Licensees must obtain the materials described in subsection (a) only from an entity licensed by the department.

(c) The department may not limit the number of qualified entities licensed under subsection (a).

(d) The department may not consider an entity licensed under IC 4-32 to sell, distribute, or manufacture the materials described in subsection (a) to be licensed for purposes of this article.

Sec. 5. The department shall charge appropriate fees to the following:

(1) An applicant seeking a license to sell pull tabs, punchboards, or tip boards.

(2) An applicant seeking a license to distribute pull tabs, punchboards, or tip boards.

(3) An applicant seeking a license to manufacture pull tabs, punchboards, or tip boards.

Sec. 6. The department may do the following:

(1) Own, sell, and lease real and personal property necessary to carry out the department's responsibilities under this article.

(2) Establish and maintain a personnel program for the department's employees with respect to this article and combine and coordinate the program with a personnel program the department has with respect to IC 6-8.1.

Sec. 7. The department may employ staff necessary to carry out this article. The employees hired by the department under this article may be the same as the department's employees hired under IC 6-8.1.

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**Chapter 4. Administrative Procedures**

**Sec. 1.** IC 6-8.1 applies to the department's decision making process under this article, except that a formal protest of any decision, intended decision, or other action must be filed not more than seventy-two (72) hours after receipt of the notice of decision, intended decision, or other action.

**Sec. 2.** If the department proposes to terminate the license of a licensee, a distributor, or a manufacturer, the entity may continue to operate under the license until the department has made a decision and all administrative appeals have been exhausted by the entity. However, the right to continue to operate after the entity's receipt of the department's decision does not apply to an entity if the department declares in the decision to terminate the license that an emergency exists that requires the immediate termination of the license.

**Sec. 3.** The department shall adopt rules under IC 4-22-2 concerning when an emergency exists that requires the immediate termination of a license under section 2 of this chapter.

**Sec. 4.** Whenever the commissioner is required to hold a public hearing concerning a license issued under this article, the hearing must be held in the department's geographic region that includes the county in which the qualified organization that is seeking or holds the license is located.

**Chapter 5. Conduct of Sales**

**Sec. 1.** A person licensed by the Indiana alcoholic beverage commission under IC 7.1-3-4 is eligible to engage in the sale of pull tabs, punchboards, and tip boards in accordance with this article.

**Sec. 2.** To engage in the sale of pull tabs, punchboards, and tip boards, a person described in section 1 of this chapter must obtain a license from the department.

**Sec. 3. (a)** Each person applying for a pull tab license under this article must submit to the department a written application on a form prescribed by the department.

**(b)** The application must include the information that the department requires, including the following:

- (1)** The name and address of the person.
- (2)** The names and addresses of the officers of the entity.
- (3)** The location at which the person will engage in the sale of pull tabs, punchboards, and tip boards.
- (4)** Any other information considered necessary by the department.

**Sec. 4. (a)** The commissioner may issue a pull tab license to a

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person if:

(1) the provisions of this section are satisfied; and

(2) the person:

(A) submits an application; and

(B) pays a fee set by the department under IC 4-35-7.

(b) Each officer of an entity that signs an application for a pull tab license under this section must live in the county where the proposed sale of pull tabs, punchboards, and tip boards will occur.

(c) The commissioner or the commissioner's designee may hold a public hearing to obtain input on the proposed issuance of a pull tab license to an applicant that has never held a license under this article.

(d) The first time a person applies for a pull tab license, the commissioner shall publish notice that the application has been filed. The notification shall be in accordance with IC 5-14-1.5-5 and must contain the following:

(1) The name of the person and the fact that it has applied for a pull tab license.

(2) The location where pull tabs, punchboards, and tip boards will be sold.

(3) The names of the operator and officers of the entity.

(4) A statement that any person can protest the proposed issuance of the a pull tab license.

(5) A statement that the department shall hold a public hearing if ten (10) written and signed protest letters are received by the department.

(6) The address of the department where correspondence concerning the application may be sent.

(e) If the department receives at least ten (10) protest letters, the department shall hold a public hearing in accordance with IC 5-14-1.5. The public hearing must be held within one (1) of the six (6) geographic regions designated by the department. The department shall issue a license or deny the application not later than sixty (60) days after the date of the public hearing.

(f) A pull tab license issued under this section:

(1) may authorize the qualified organization to engage in the sale of pull tabs, punchboards, and tip boards during a period of one (1) year;

(2) must state the location of the permitted sales of pull tabs, punchboards, and tip boards;

(3) must state the expiration date of the license; and

(4) may be reissued annually upon the submission of an

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1 application for reissuance on a form established by the  
2 department and upon the licensee's payment of a fee set by  
3 the department.

4 (g) Notwithstanding subsection (f)(4), the commissioner shall  
5 hold a public hearing for the reissuance of a pull tab license if:

6 (1) an applicant has been cited for a violation of law or a rule  
7 of the department; or

8 (2) the department finds, based upon investigation of at least  
9 three (3) written and signed complaints alleging a violation of  
10 law or a rule of the department in connection with the pull tab  
11 license, that one (1) or more of the alleged violations:

12 (A) has occurred;

13 (B) is a type of violation that would allow the department  
14 to cite the applicant for a violation of a provision of this  
15 article or of a rule of the department; and

16 (C) has not been corrected after notice has been given by  
17 the department.

18 (h) If the department is required to hold a public hearing on an  
19 application for a reissuance of a pull tab license, it shall comply  
20 with the same procedures required under this section for notice  
21 and for conducting the hearing.

22 (i) The commissioner may deny a license if, after a public  
23 hearing, the commissioner determines that the applicant:

24 (1) has violated a local ordinance; or

25 (2) has engaged in fraud, deceit, or misrepresentation.

26 Sec. 5. The department may not limit the number of persons  
27 licensed under this article.

28 Sec. 6. IC 35-45-5 does not apply to a person who conducts,  
29 participates in, or receives a prize from the sale of pull tabs,  
30 punchboards, or tipboards under this article.

31 Sec. 7. A licensee shall maintain accurate records of all financial  
32 aspects of the sale of pull tabs, punchboards, and tipboards under  
33 this article. A licensee shall make accurate reports of all financial  
34 aspects of the sale of pull tabs, punchboards, and tipboards to the  
35 department within the time established by the department. The  
36 department may prescribe forms for this purpose.

37 Sec. 8. (a) The total prizes awarded for one (1) pull tab,  
38 punchboard, or tip board game may not exceed two thousand  
39 dollars (\$2,000).

40 (b) A single prize awarded for one (1) winning ticket in a pull  
41 tab, punchboard, or tip board game may not exceed three hundred  
42 dollars (\$300).

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(c) The selling price for one (1) ticket for a pull tab, punchboard, or tip board game may not exceed one dollar (\$1).

Sec. 9. The following persons may not play or participate in any manner in the sale of pull tabs, punchboards, or tipboards under this article:

(1) An employee of the department.

(2) A person less than twenty-one (21) years of age.

#### Chapter 6. Pull Tab Enforcement Fund

Sec. 1. As used in this chapter, "surplus revenue" means the amount of money in the pull tab enforcement fund established by section 2 of this chapter that is not required to meet the costs of administration and the cash flow needs of the department under this article.

Sec. 2. The pull tab enforcement fund is established. The commissioner shall administer the fund.

Sec. 3. The fees and civil penalties collected by the department under this article shall be deposited in the fund.

Sec. 4. Money in the fund does not revert to the state general fund at the end of a state fiscal year. The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

Sec. 5. There is appropriated annually to the department from the fund an amount sufficient to cover the costs incurred by the department for the purposes specified in this article.

Sec. 6. Before the last business day of January, April, July, and October, the department shall, upon approval of the budget agency, transfer the surplus revenue to the treasurer of state for deposit in the lottery and gaming surplus account in the build Indiana fund.

#### Chapter 7. License Fees

Sec. 1. The department shall charge a license fee to an applicant for a pull tab license or a manufacturers and distributors license under this article.

Sec. 2. The department shall establish an initial license fee schedule. However, the license fee that is charged to a person in the first year that the person applies for a license may not exceed one thousand dollars (\$1,000).

Sec. 3. The license fee that is charged to a licensee that renews a pull tab license must be based on the total gross revenue of the licensee from the sale of pull tabs, tip boards, and punch boards in the preceding year according to the following schedule:

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	Class	Gross Revenues		Fee
		At Least	But Less Than	
1	A.	\$0	\$15,000	\$1,000
2	B.	\$15,000	\$25,000	\$2,000
3	C.	\$25,000	\$50,000	\$3,000
4	D.	\$50,000	\$75,000	\$4,000
5	E.	\$75,000	\$100,000	\$5,000

Sec. 4. The department shall establish a license fee schedule for the renewal of licenses for manufacturers and distributors. However, the license fee that is charged to a person that renews a manufacturer's or distributor's license may not exceed one thousand dollars (\$1,000).

#### Chapter 8. Penalties

Sec. 1. (a) The department may suspend or revoke the license of or levy a civil penalty against a licensee or an individual acting on behalf of a licensee under this article for any of the following:

- (1) Violation of a provision of this article or of a rule of the department.
- (2) Failure to accurately account for:
  - (A) pull tabs;
  - (B) punchboards; or
  - (C) tip boards.
- (3) Failure to accurately account for the proceeds from the sale of pull tabs, punchboards, or tip boards licensed under this article.
- (4) Commission of fraud, deceit, or misrepresentation.
- (5) Conduct prejudicial to public confidence in the department.

(b) If a violation is of a continuing nature, the department may impose a civil penalty upon a licensee or an individual acting on behalf of a licensee for each day the violation continues.

Sec. 2. The department may impose upon a licensee or an individual acting on behalf of a licensee the following civil penalties:

- (1) Not more than one thousand dollars (\$1,000) for the first violation.
- (2) Not more than two thousand five hundred dollars (\$2,500) for the second violation.
- (3) Not more than five thousand dollars (\$5,000) for each additional violation.

Sec. 3. In addition to the penalties described in section 2 of this chapter, the department may do all or any of the following:



- (1) Suspend or revoke a licensee's license.
- (2) Lengthen a period of suspension of a licensee's license.
- (3) Prohibit an individual who has been found to be in violation of this article from participating in the sale of pull tabs, punchboards, or tip boards.
- (4) Impose an additional civil penalty of not more than one hundred dollars (\$100) for each day a civil penalty imposed under section 2 of this chapter goes unpaid.

**Sec. 4. A person who violates a provision of this article commits a Class B misdemeanor.**

#### **Chapter 9. Security**

**Sec. 1. The department is responsible for security matters under this article. The commissioner may, with the approval of the governor, employ the individuals that are necessary to carry out this chapter.**

**Sec. 2. At the direction of the commissioner, the department may do any of the following:**

- (1) Investigate an alleged violation of this article.
- (2) Arrest an alleged violator of this article or of a rule adopted by the department under this article.
- (3) In the performance of the department's lawful duties, enter upon a premises where pull tabs, tip boards, or punchboards are being purchased, sold, manufactured, printed, or stored.
- (4) Take necessary equipment from a premises described in subdivision (3) for further investigation.
- (5) Obtain full access to all financial records of the entity whose premises are described in subdivision (3) upon request.
- (6) If there is a reason to believe that a violation of this article or a rule adopted under this article has occurred, search and inspect the premises where the violation is alleged to have occurred or is occurring. A search under this subdivision may not be conducted unless a warrant has first been obtained by the commissioner. A contract entered into by the commissioner may not include a provision allowing for warrantless searches. A warrant may be obtained from a court in the county where the search will be conducted or in Marion County.
- (7) Seize or take possession of:
  - (A) papers;
  - (B) records;
  - (C) tickets;



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(D) currency; or  
 (E) other items;  
 related to an alleged violation of this article or a rule adopted  
 under this article.

Sec. 3. (a) The department shall conduct investigations  
 necessary to ensure the security and integrity of the operation of  
 games of chance under this article. The department may conduct  
 investigations of the following:

- (1) A licensee.
- (2) An applicant for a license issued under this article.
- (3) A licensed manufacturer or distributor.
- (4) An employee of the department under this article.
- (5) An applicant for contracts or employment with the  
 department under this article.

(b) The commissioner may require persons subject to an  
 investigation under subsection (a) to provide information,  
 including fingerprints, that is:

- (1) required by the state police department to carry out the  
 investigation; or
- (2) otherwise needed to facilitate access to state and criminal  
 history information.

Sec. 4. (a) The state police department shall provide the  
 following:

- (1) Assistance in obtaining criminal history information  
 relevant to investigations required for honest, secure,  
 exemplary operations under this article.
- (2) Any other assistance requested by the commissioner and  
 agreed to by the superintendent of the state police  
 department.

(b) Any other state agency, including the Indiana alcoholic  
 beverage commission and the professional licensing agency, shall  
 upon request provide the commissioner with information relevant  
 to an investigation conducted under this article.

#### Chapter 10. State Preemption

Sec. 1. The sale of pull tabs, punchboards, and tip boards is not  
 allowed in Indiana, except when authorized by the department  
 under this article or IC 4-32.

Sec. 2. Local taxes, regardless of type, may not be imposed upon  
 the operations of the department under this article or upon the sale  
 of pull tabs, punchboards, or tip boards under this article.

Sec. 3. (a) Local governmental authority concerning all matters  
 relating to the possession, transportation, advertising, sale,

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1 manufacture, printing, storing, or distribution of pull tabs,  
 2 punchboards, or tip board is preempted by the state under the  
 3 following:

4 (1) This article.

5 (2) IC 4-30.

6 (3) IC 4-32.

7 (b) A county, municipality, or other political subdivision of the  
 8 state may not enact an ordinance relating to the department's  
 9 operations authorized by this article.

10 Sec. 4. A state or local law providing a penalty for, restriction  
 11 on, or prohibition against the possession, manufacture,  
 12 transportation, distribution, advertising, printing, storing, or sale  
 13 of pull tabs, punchboards, or tip boards does not apply to the  
 14 possession, manufacture, transportation, distribution, advertising,  
 15 printing, storing, or sale of pull tabs, punchboards, or tip boards  
 16 under this article.

17 Chapter 11. Taxation of Prizes

18 Sec. 1. A licensee that awards a monetary prize shall withhold  
 19 state adjusted gross income tax from the prize awarded to a winner  
 20 and report the prize awarded to the department of state revenue in  
 21 the same manner as required under federal law, if the licensee that  
 22 awards the prize is required to withhold federal tax or report the  
 23 prize under federal law.

24 Sec. 2. A licensee that awards a prize of merchandise or other  
 25 goods shall include with each prize awarded the appropriate forms  
 26 for reporting the prize to the Internal Revenue Service and  
 27 department of state revenue, if reporting the receipt of the prize is  
 28 required. The licensee shall withhold state adjusted gross income  
 29 tax and report prizes awarded under this section to the department  
 30 of state revenue in the same manner as required under federal law.

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